

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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U.S. DISTRICT COURT  
MINNEAPOLIS, MINNESOTA

Frederick Bradley Kellogg,

Plaintiff,

Civil Action No. 11-2178 PAM/JSM

v.

Internal Revenue Service,

COMPLAINT

Defendant.

COMES NOW the Plaintiff, and for his claim for relief against the Defendant states and avers:

**THE PARTIES**

1. Plaintiff, Frederick Bradley Kellogg is an individual with legal residence now at 3210 High Point Drive, Chaska, MN 55318.

2. This civil action arises under 5 U.S.C. §552 and 5 U.S.C §552a. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1346, and venue is proper in this district pursuant to 28 U.S.C. §1402.

3. Plaintiff is a person and Defendant Internal Revenue Service is an agency of the United States of America, within the meaning of the Freedom of Information Act, the Privacy Act, and the Administrative Procedure Act.

**THE CLAIMS FOR RELIEF**

4. Pursuant to the Freedom of Information Act, 5 U.S.C. §552, and the Privacy Act, 5 U.S.C. §552a, on February 28, 2011, Plaintiff properly filed a request for disclosure of information contained in administrative and investigative files pertaining to

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its 2005 through 2009 federal income taxes, including but not limited to all tax returns, revenue agent's workpapers, transmittal slips, revenue agents reports, case activity workpapers, and any files, records, correspondence, memoranda, or other documents regarding any proposals, recommendations, referrals, or other actions or suggested actions relating to the examination or investigation of its 2005 through 2009 federal income tax returns. A redacted copy of the request is attached as Exhibit 1. The Defendant received this request on March 2, 2011.

5. On March 30, 2011, Defendant notified Plaintiff's counsel of the unavailability of a response in the attached letter (Exhibit 2).

6. On May 13, 2011, June 30, 2011, and July 29, 2011, Defendant issued letters continuing to maintain that the requested records were unavailable. (Ex. 3).

7. Defendant's failure to respond with the requested records and to articulate any factual basis for denying production of the records violates the Freedom of Information Act, as amended.

8. Defendant's failure to disclose the contents of Plaintiffs' 2005 through 2009 income tax administrative and investigative files is not privileged or exempted from disclosure and violates the Freedom of Information Act, as amended.

9. Plaintiff is entitled to complete disclosure of the 2005 through 2009 federal income tax administrative and investigative files pursuant to the Privacy Act and Freedom of Information Act, as amended.

**MOTION TO COMPEL  
PRODUCTION OF INDEX**

10. Plaintiff realleges the allegations set forth in paragraphs 1 through 9 of this Complaint.

11. Plaintiff moves for an order compelling Defendant's prompt production and delivery to Plaintiffs of an index of documents purported by Defendant to be privileged setting forth the following:

- (a) title of the document;
- (b) date of the document;
- (c) identities of author and recipient;
- (d) an adequate factual description of each document and of each deletion from any document partially disclosed; and
- (e) a statement of exemption for each document or deletion and the justification for each exemption claimed.

12. Plaintiff is entitled to reasonable attorney's fees and costs of maintaining this action pursuant to 5 U.S.C. §552(a)(4)(E).

**WHEREFORE**, Plaintiff prays for judgment and for an order as follows:

A. That Defendant and its officers, employees and representatives disclose to plaintiff of each and every document heretofore withheld from plaintiff which were requested by Plaintiff from its 2005 through 2009 federal income tax administrative and investigative files.

B. That Defendant's be ordered to provide an index containing the information set forth in paragraph 11 herein, and promptly furnish the same to Plaintiff.

C. That Defendant pay Plaintiff's reasonable attorney's fees and litigation costs pursuant to 5 U.S.C. §552(a)(4)(E).

D. For such other and further relief as may be just and equitable in the circumstances.

Foster & Brever, PLLC

Dated: 8/2/11

BY: 

Thomas E. Brever, Esq.  
2812 Anthony Lane S., Suite 200  
St. Anthony, MN 55418  
(612) 436-3291 FAX: (612) 788-9879  
Attorney I.D. #11356  
Attorneys for the Plaintiff  
tbrever@fosterbrever.com